

## IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

First : Robert Bruce Spertell  
Named  
Inventor  
App. No. : 09/637,923  
Filed : August 14, 2000  
For : METHOD AND APPARATUS FOR  
TREATING SUBCUTANEOUS  
HISTOLOGICAL FEATURES  
Examiner : Fadi H. Dabour  
Art Unit : 3742

STATEMENT OF GRACE SIM SUPPORTING UNINTENTIONAL ABANDONMENT  
UNDER 37 C.F.R. § 1.137(b)

I, Grace Sim, do hereby state as follows:

1. I am a citizen of Canada who has Permanent Resident status in the United States. I had been an officer at MW Medical, Inc. since its inception in December 1997 and Microwave Medical Corporation (a wholly-owned subsidiary of MW Medical, Inc.) since 1999.

2. I have reviewed the Decision on Petition mailed May 30, 2008 dismissing the petition to revive the above-identified application under 37 C.F.R. § 1.137(b).

3. Since MW Medical, Inc.'s inception in 1997, I served in a number of capacities as a corporate officer, including Secretary, Treasurer, Vice President and Chief Financial Officer ("CFO") of the company. My responsibilities extended beyond MW Medical, Inc. to its wholly-owned subsidiary, Microwave Medical Corporation, beginning around 1999. Both companies (collectively "MW Medical") shared virtually the same management team, and I was a corporate officer of both until June 2004.

4. In my role as CFO, I was responsible for all financial issues related to MW Medical, Inc. and Microwave Medical Corporation. Among my responsibilities was the securing of property leases for MW Medical, Inc. at 6617 N. Scottsdale Road, Suite 103, Scottsdale, AZ 85253 in 1997 and for Microwave Medical Corporation at 65 West Easy Street, Unit 104, Simi Valley, CA 93065 in 1999. In May 2000, due to financial difficulties, we decided to terminate our

Docket No. : MWMED.001DV1  
Appl. No. : 09/637,923

lease and vacated the Microwave Medical Corporation premises in Simi Valley, CA. See Exhibit 10. We remained, however, at our MW Medical, Inc. address in Scottsdale, AZ, and all correspondences related to MW Medical, Inc. or Microwave Medical Corporation were sent to this address.

5. MW Medical was in the business of manufacturing and selling its primary product known as the "MW 2000," a microwave hair removal device. Although our MW 2000 product was promising and even received FDA approval on October 25, 1999, the company was not profitable. On January 22, 2002, both MW Medical, Inc. and Microwave Medical Corporation filed for Chapter 11 bankruptcy in the District Court of Arizona. As Microwave Medical Corporation was a wholly owned subsidiary of MW Medical, Inc., the bankruptcy cases, and thus the assets and claims of the two entities, were combined and were owned by the successor MW Medical following emergence from bankruptcy. Shortly thereafter, around April 2002, we vacated our Scottsdale, AZ headquarters due to cost considerations. As there were a myriad of issues surrounding bankruptcy at the time, patent attorneys retained by MW Medical may not have been informed of a forwarding address.

6. Microwave Medical Corporation and MW Medical, Inc. filed patent applications, including U.S. Pat. Application No. 09/637,923 ("923 Application") and its parent application, U.S. Pat. Application No. 08/904,175, now U.S. Patent No. 6,104,959, both to Robert B. Spertell. The parent application of the '923 Application was assigned from Spertell to Microwave Medical Corporation. The assignment document expressly assigned all divisional applications (such as the '923 Application) to Microwave Medical as well, and was recorded in the United States Patent and Trademark Office on July 31, 1997 at Reel 008662 and Frame 0965.

7. MW Medical retained attorneys to file and prosecute the '923 Application. I was the contact person at MW Medical, Inc. and Microwave Medical Corporation who was responsible for making decisions regarding both companies' intellectual property. I have spoken with one attorney, Raymond Bogucki, on a few occasions, however I do not recall having any discussions or receiving any correspondence regarding the above-captioned patent application.

8. During the entire time that I was responsible for the '923 Application, I assumed that the '923 Application was pending and awaiting examination, as I received no information from Mr. Bogucki or any other attorneys to the contrary.

Docket No. : MW/MED.001DV1  
Appl. No. : 09/637,923

9. All of MW Medical, Inc. and Microwave Medical Corporation's intellectual property, including the '923 Application, was assigned to Jan Wallace on March 21, 2003 in exchange for a reduction in debt owed to her. See Exhibit 13. At that time, my understanding was that I was no longer responsible for managing the intellectual property including '923 Application because it had been assigned to Ms. Wallace.

10. As someone unsophisticated in patent law, I relied heavily on the advice of the patent attorneys for guidance and was largely unfamiliar with the patent process. Only recently, circa February 2008, was I informed that Miramar Labs is the current assignee of the '923 Application and that the '923 Application had gone abandoned. I now understand that the '923 Application went abandoned on September 6, 2002 for failure to respond to an Office Action. I now also understand that Mr. Hanscom attempted to contact me regarding this Office Action, including in a letter dated June 12, 2002, but I neither received his letter or any other communications from him. I had no intention to allow the application to go abandoned, and had I received the communication from Mr. Hanscom, I would have instructed him to respond to the Office Action.

11. I believe that the abandonment of the '923 Application and entire delay from the date of the abandonment of the '923 Application to at least the date of the assignment of the patent application to Ms. Wallace on March 21, 2003 was unintentional.

12. I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code and that such willful false statements may jeopardize the validity of the application or any patent issued therefrom.

Date:

9/15/08

  
Grace Sim